IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2003

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

W.P.NO.20689 OF 2002
and
W.P.M.P.No.28635 of 2002

S.Renganathan ..Petitioner

-Vs-

The District Collector
Namakkal District
Namakkal ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorari as stated therein.

For petitioner : Mr.K.Ramakrishna Reddy

For respondents : Mr.P.Gunaraj, Spl.G.P.(W)

:ORDER
This petition is filed for the issue of a writ of Certiorari calling for the records of the respondent's proceedings bearing Na.Ka.35/20 01/Mines.B dated 24-05-2002 pertaining to the sand quarry measuring 1 0-00-0 Hectares, comprised in Survey No.53 (part), situated in Agrahara Kondalam village, Paramathi-Velur Taluk, Namakkal District quash the same.

2.The petitioner is a lessee to quarry the sand in Cauvery river, Agrahara Kondalam Village, Paramathi Velur Taluk. His lease period is for a period of three years from 19.4.2001 to 18.04.2004. The condition of the lease is that the petitioner should not use the machinery like poclain for the quarrying the sand. On 24.1.2002, the quarrying was inspected by the authorities and that poclain was kept not for quarrying but for some other purposes like laying the leading road for the lorries to reach the place of quarrying. But, the authorities imposed the penalty of Rs.25,000/- alleging that the petitioner used the poclain for quarrying sand. That penalty was paid by the petitioner. Subsequently, on 1.4.2002 once again inspection has taken place. It was found by the inspecting authorities that the poclain was found stationed within the lease area. Therefore, a show cause notice dated 6.4.2002 was issued to the petitioner to show cause as to why the petitioner's license should not be cancelled. The petitioner has replied by his letter

dated 19.4.2002 stating the reasons why the poclain was kept there and specifically denied the use of poclain for quarrying. But, this explanation was not accepted. Subsequent to that no other enquiry was conducted. On 25.4.2002, the impugned order was passed whereby the lease was cancelled. Challenging the order of cancellation of lease, the present writ petition is filed.

3.The learned counsel for the petitioner Mr.K.Ramakrishna Reddy relied upon the rule 36 (A)(6) (a rule introduced in 2000) of the Tamil Nadu Minor Mineral Concession Rules, 1959 which is as follows:
"No machinery shall be used for quarrying sand from river beds."

The learned counsel for the petitioner argued that this rule only prohibits quarrying of the sand by using machinery. It does not prohibit using of the machinery like poclain for laying of the road to enable the lorries to reach the place of lease and also even for loading, the machineries are not prohibited from being used. Therefore, for all these purposes, namely, when the lorries got struck inside the sand, it has to be lifted by using poclain and that when the road is formed, the poclains are used. Therefore, the learned counsel submits that this poclain was used for laying the road as well as to pull up any lorry which was got in the sand and it was not used for quarrying the sand. The cancellation of the licence of the petitioner without conducting any enquiry is illegal.

4.In support of his argument, the learned counsel for the petitioner referred to the order of this Court by P.D.Dinakaran,J. in W.P.No.12 053/2000 dated 19.7.2000 and the relevant portion of the said order is given below :

"6.Strictly speaking, by proceedings dated 20.6.2000, the petitioner was given an opportunity not only to submit his explanation, but also to appear for an enquiry before the respondent on 3.7.2000 as rightly pointed out by the learned Additional Government Pleader. However, it appears that the respondent, while deciding the issue by proceedings dated 6.7.2000, has considered the representation of the petitioner dated 3.7.2000 as his self-explanation, which indicates that the respondent had not conducted an enquiry on 3.7.2000, when the petitioner was alleged to have been given an opportunity of being heard. This requires the Court to set aside the proceedings dated 6.7.2000 and to quash the same without expressing any opinion on merits of the case.

7.Accordingly, the impugned proceedings dated 6.7.2000 is set aside and the matter is remitted to the respondent with a direction to give a reasonable opportunity to the petitioner of being heard and to permit the petitioner to peruse the relevant records that are relied upon by the respondent, to hold an enquiry in compliance of the principles of natural justice and pass appropriate orders on merits within 30 days from the date of receipt of the copy of the above order. Similarly, petitioner is also directed to co-operate in the enquiry without seeking any adjournment on the date of hearing."
The learned counsel submits that the said decision squarely applies to the facts of the present case and therefore, the impugned order is liable to be

quashed.

5.On this point, the argument of the learned Special Government Advocate was heard.

6.Considering the fact that the rule does not specifically prohibit placing of poclains near the lease site and merely because the poclain was found to be stationed, it cannot be taken that the poclain was used for quarrying the sand. Though the person who inspected the quarry has stated that there was evidence for using poclain for quarrying, still it is only a report and on that basis no enquiry has been conducted. Only a show cause notice was given and reply to that show cause notice was submitted. But, the order of cancellation of the lease was passed. Therefore, following the decision referred to above, the impugned order is liable to be cancelled and accordingly the same is cancelled and the matter is remitted back to the respondent with a direction to give a reasonable opportunity to the petitioner for being heard; to permit the petitioner to verify the relevant records of the respondent; to hold an enquiry following the principles of natural justice and pass appropriate orders on the merits of the case within a period of 30 days from the date of receipt of the copy of the order. The petitioner is directed to cooperate in the enquiry without seeking any adjournment on the date of hearing.

7.Before concluding, this Court cannot but observe that when the intention of the Government is to prohibit the use of machineries for quarrying, there must be a specific rule prohibiting the use of such machineries any where near the site for any other purpose. If the rules are so framed, this could be easily implemented. But, this present rule is not effective. Hence, if the Government really wants to control the use of machinery for quarrying effectively, the rules must be properly modified.

8.The writ petition is allowed accordingly. No costs. Consequently, W.P.M.P.No.28635 of 2002 is closed.

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Internet:Yes

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To

The District Collector
Namakkal District
Namakkal

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